

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 1-12 and 14 remain in the application and claim 1 is independent. The Office Action dated February 23, 2011 has been received and carefully reviewed. Each issue raised in the Office Action is addressed below. Reconsideration and allowance of the present application are respectfully requested in view of the amendments and the following remarks. Support for the amendment to claim 1 may be found, by way of example only, on lines 17-37 of page 2 of the specification as filed.

Claim Rejections – 35 U.S.C. § 103

Claims 1-3, 6, 9, 10 and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wommelsdorf in view of Schmidt. Applicants submit the Examiner has failed to establish a *prima facie* case of obviousness and respectfully traverse the rejection. A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the cited references must teach or suggest each and every element in the claims. See MPEP § 706.02(j) and MPEP §§ 2141-2144.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicants respectfully submit that independent claim 1 has been amended to recite a combination of elements in a cup package including that both the cup and lid are conical and that the lid has a discoid center and a surrounding conical frame, thus emphasizing the structural similarity between the cup and the lid, including the outwardly extending mouth rolls. Applicants respectfully submit that this combination of elements as set forth in independent claim 1 is not disclosed or made obvious by the prior art of record, including Wommelsdorf and Schmidt.

Wommelsdorf only describes a conical cup with a mouth roll. There is no description of a lid, or suggestion for a lid, as the cup therein is intended for being dispensed from a beverage machine. Should one of skill in this art decide to provide a lid, the choices would be many, including heat-sealed lids or lids with a snap fit locking over the mouth roll. Thus, by itself, Wommelsdorf lacks many of the features recited in claim 1.

Schmidt describes a lid with what might be construed as a discoid center and a surrounding frame. The frame, however, is not conical. And the mouth roll extends inwardly, not outwardly as claimed in the instant invention. The container 1 shown in Figure 1 of Schmidt is not conical and has no mouth roll. There is no showing or suggestion in Schmidt of a cup and a lid having the same basic structures, much less a showing of both the cup and the lid of being conically expanding, being attached by friction, and both having an outwardly extending mouth roll facilitating opening as well as closing of the cup package. In order to establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1395 (2007) (citing *In Re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

Applicants respectfully submit that the combination of elements as set forth in independent claim 1 is not disclosed or made obvious by the prior art of record, including Wommelsdorf and Schmidt, for the reasons explained above. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

With regard to dependent claims 2, 3, 6, 9, 10 and 14, Applicants submit that dependent claims 2, 3, 6, 9, 10 and 14 depend, either directly or indirectly, from independent claim 1 which is allowable for the reasons set forth above, and therefore claims 2, 3, 6, 9, 10 and 14 are allowable based at least on their dependence from claim 1. Reconsideration and allowance thereof are respectfully requested.

Claims 4, 5, 7, 8 and 12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wommelsdorf in view of Schmidt and Wanderer. Claim 11 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Wommelsdorf in view of Schmidt and Bacon. These rejections, insofar as they are applicable to these claims, are respectfully traversed.

Wanderer was cited to show protrusions 68, 70, 72 and recesses (the inside of 76, 78 and 80). First, Applicants respectfully submit that these alleged “protrusions” and “recesses” are not protrusions “of the opposite surfaces of the lid and cup”, as claimed, as they are instead parts of the lid and cup. Second, both the cups and lids in Wanderer are made of thermoplastic. And therefore Wanderer fails to show or suggest providing the paperboard cup of Wommelsdorf with

a cup and lid both formed of a discoid center and surrounding frame expanding conically upwards. Thus, Wanderer cannot remedy the defects of Wommelsdorf and Schmidt discussed above.

Bacon was cited to show techniques for bending the mouth of a container so as to form a mouth roll. However, Bacon only discloses dies 50 and sleeves 62, 64 and 66 for forming a rolled lip and fails to show or suggest, *inter alia*, providing the paperboard cup of Wommelsdorf with a cup and lid both formed of a discoid center and surrounding frame expanding conically upwards. Thus, Bacon cannot remedy the defects of Wommelsdorf and Schmidt discussed above. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

All objections and rejections raised in the Office Action having been properly traversed and addressed, it is respectfully submitted that the present application is in condition for allowance. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Prompt and favorable consideration of this Amendment is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Paul T. Sewell, Registration No. 61,784, at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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